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April 14, 2005

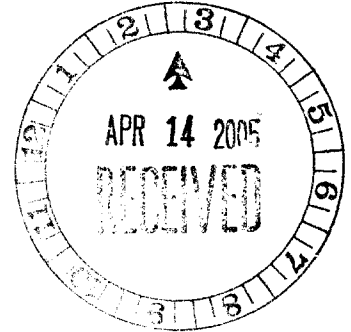
BY HAND DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W., Room 711
Washington, D.C. 20423

ENTERED
Office of Proceedings

APR 14 2005

Part of
Public Record



Re: Docket No. 42072, *Carolina Power & Light
Company v. Norfolk Southern Railway Company*

Dear Secretary Williams:

Enclosed for filing in the referenced proceeding please find an original and ten copies of Complainant's Petition to Modify Procedural Schedule. Because this Petition is being filed twenty-one (21) days before its Opening Statement is due under the present schedule, Complainants requests that the Board give this filing **EXPEDITED CONSIDERATION**.

An additional copy of this pleading also is enclosed. Please indicate receipt and filing by time-stamping this extra copy and returning it to the bearer of this letter.

Thank you for your prompt attention to this matter.

Sincerely,

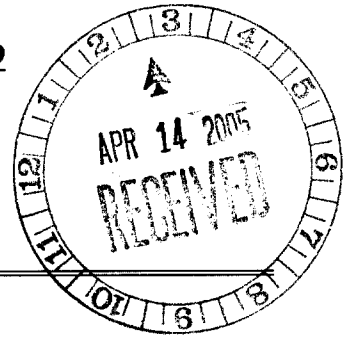
C. Michael Loftus
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Enclosures

cc: David M. Konschnik
Counsel for NS

EXPEDITED CONSIDERATION REQUESTED

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



CAROLINA POWER & LIGHT COMPANY)

Complainant,)

v.)

NORFOLK SOUTHERN RAILWAY)
COMPANY,)

Defendant.)

Docket No. 42072

PETITION TO MODIFY PROCEDURAL SCHEDULE

Complainant Carolina Power & Light Company ("CP&L") hereby requests that the Board modify the procedural schedule issued by the Board on January 6, 2005 as follows to permit a thirty (30) day extension for the filing of CP&L's Opening Statement:

	<u>Present Schedule</u>	<u>Proposed Schedule</u>
Opening Statement due	May 6, 2005	June 6, 2005
Reply Statement due	June 6, 2005	July 8, 2005
Rebuttal Statement due	July 6, 2005	August 8, 2005
Briefs due	August 5, 2005	September 8, 2005

Modification of the schedule is appropriate for several reasons. First, one of CP&L's expert consultants and witnesses (L.E. Peabody & Associates), is currently involved in a number of pending coal rate cases. The procedural schedule in this matter

was initially proposed in recognition of this involvement, and was structured so as not to conflict with the procedural schedules in those other matters. Recent modifications to the procedural schedules in these other matters, however, has limited the availability of that consultant for purposes of this proceeding. Specifically, on March 21, 2005, the Board modified the procedural schedule in Docket No. 42088, *Western Fuels Association, Inc. and Basin Electric Power Cooperative v. BNSF Railway Company "WFA"*). As a result of these revisions, Opening Statements in Docket No. 42088 are now due on April 19, 2004, just seventeen days before the date that CP&L's Opening Statement would be due in this phasing proceeding. In addition, by order dated March 18, 2005, the Board granted a one-week extension in the Otter Tail rate case (Docket No. 42071). As a consequence, supplemental reply evidence in Otter Tail was due on April 4, 2004, which impacted the availability of L.E. Peabody for the *WFA* proceeding and the instant proceeding. The analyses being developed by L.E. Peabody are necessary for use by other experts in the development of their testimony and thus time is required after the conclusion of the L.E. Peabody analyses for the completion of work on other expert testimony.

Second, as CP&L explained in its recent Motion to Compel certain revenue/traffic data and the masking factors to the Board's Costed Waybill Sample, CP&L intends to submit analyses relating to NS' revenue shortfall needs, the magnitude of the increase of the challenged rate increases, and the magnitude of past increases.

While a principal reason for the denial of CP&L's Motion to Compel was the assumption that certain contracts and related information would be produced by NS that would provide CP&L with the information purportedly needed for these analyses, one of the reasons CP&L sought the information that was the subject of its Motion to Compel was to obtain the revenue/traffic information from NS in a format that would be more efficient and less costly than having to conduct an analysis from contract information. Given that CP&L has been denied the opportunity to access the information in the more efficient format, CP&L will be unable to complete its Opening Statement prior to April 27, 2005.

CP&L has consulted with counsel for NS and had been advised that NS is agreeable to the proposed extension. Accordingly, CP&L respectfully submits that the Board should grant the requested one-month extension as it relates to all of the evidentiary submissions.

Respectfully submitted,

CAROLINA POWER & LIGHT COMPANY

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OF COUNSEL:

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Dated: April 14, 2005

Attorneys for Complainant

CERTIFICATE OF SERVICE

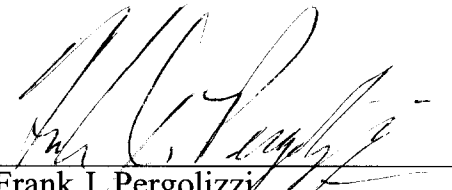
I hereby certify, that I have this 14th day of April, 2005 caused to be served copies of the foregoing Petition to Modify Procedural Schedule on counsel for defendant Norfolk Southern Railway Company as follows:

By hand delivery to:

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Terence M. Hynes, Esq.
Paul A. Hemmersbaugh, Esq.
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and by Federal Express to:

James A. Squires, Esq.
George A. Aspatore, Esq.
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An Attorney for Complainant